IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. [redacted] 119

WILLIAM J. MURRAY III, INFANT, BY MADALYN E. MURRAY, HIS MOTHER AND NEXT FRIEND, AND MADALYN E. MURRAY, INDIVIDUALLY,

Petitioners,

VS.

JOHN N. CURLETT, PRESIDENT, SAMUEL EPSTEIN, MRS. M. RICHMOND FARRING, ELI FRANK, JR., DR. ROGER HOWELL, HENRY P. IRR, DR. WILLIAM D. McELROY, MRS. ELIZABETH MURPHY PHILLIPS, JOHN R. SHERWOOD, INDIVIDUALLY, AND CONSTITUTING THE BOARD OF SCHOOL COMMISSIONERS OF BALTIMORE CITY,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The Daily Record Co., Baltimore 3, Md.

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PRELIMINARY STATEMENT

This brief is submitted on behalf of the Board of School Commissioners of Baltimore City, Respondents, in opposition to the granting of the writ of certiorari sought herein. The basis for this opposition is set out as follows:

(1) The judgment handed down by the Court of Appeals of Maryland is not in conflict with the First and Fourteenth

Amendments of the Federal Constitution, as so analyzed and interpreted by this Court in *Engel v. Vitale*, U.S. (1961), 18 Misc. 2d 659, 191 N.Y.S. 2d 453; *Zorach v. Clauson*, 343 U.S. 306, 72 S. Ct. 679, 96 L. Ed. 954 (1952); *Church of the Holy Trinity v. United States*, 143 U.S. 457, 12 S. Ct. 511, 36 L. Ed. 226 (1892); *West Virginia State Board of Education v. Barnett*, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628, 147 A.L.R. 674 (1943); and *Torcaso v. Watkins*, 367 U.S. 488, 81 S. Ct. 1680, 6 L. Ed. 2d 982, (1961). Furthermore, under the criteria expressed by this Court for the granting of certiorari, there is presented no Federal question of any substance worthy of review by this Court.

(2) The allegation of the Petitioners as to the injury they sustained and their further allegation as citizens and taxpayers does not give them sufficient standing to raise the question herein. *Doremus v. Board of Education*, 5 N.J. 453, 75 A. 2d 880 (1950), Appeal dismissed 342 U.S. 429, 72 S. Ct. 394, 96 L. Ed. 475 (1951)

JURISDICTION

The Petitioners herein invoked the jurisdiction of the Court under 28 U.S.C. Sec. 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves:

1. Section 1 of the Fourteenth Amendment to the Constitution of the United States.

2. First Amendment to the Constitution of the United States.

3. Article 77, Sections 202 and 203 of the Annotated Code of Maryland (Michie 1957). Section 91 of Charter

and Public Local Laws of Baltimore City (Flack 1949).

4. Article VI, Section 6 of Rules of Board of School Commissioners of Baltimore City. Amendment to Rule adopted November 17, 1960.

5. Article 77, Section 231 of Annotated Code of Maryland (Michie 1957).

All of these are set forth verbatim on pages 3, 4 and 5 of the petitioner's certiorari brief.

STATEMENT OF THE CASE

A. *Background of the morning opening exercises.*

In 1905 the Board of School Commissioners adopted as one of its rules Article VI, Section 6. This was done pursuant to its rule-making powers as vested in the Board by Article 77, Section 202 of the Annotated Code of Maryland (Michie 1957). This rule provides in effect that portions of the Bible and or the Lord's Prayer are to be recited during morning opening exercises without comment. Thereafter, on November 17, 1960, the School Board, upon the advice of the Attorney General of Maryland, amended the rule to excuse any child from participating in, or attending, the exercise upon the written request of a parent or guardian. His mother having made such request, the infant petitioner was thereafter excused from the morning exercises.

B. *The nature and background of this litigation*

Prior to the adoption of the amendment by the School Board, the Petitioners requested a hearing before the Board to voice their objection to the continued compliance with Article VI, Section 6, of the School Board rules. Confronted

with this demand, the Board requested an opinion from the Attorney General of Maryland relating to the validity of the rule which this Court is now being asked to declare unconstitutional. More specifically, the Attorney General was asked whether Bible reading in the public schools is Constitutional per se, and if so, must the rule further provide that those who object be excused. Both questions were answered affirmatively.

As to the first question, the opinion stated:

> "It would seem reasonable to conclude that the 'establishment' clause dictates that there be a separation between Church and State, but not that the State need be stripped of all religious sentiment. It would be tragic if the State of Maryland, whose history, traditions, founding, and its early law are steeped in religious connotations, would be compelled to forbid to its children as a part of their education, the right and duty to bow their heads in humility before the Supreme Being."

In concluding on this point, the Attorney General stated:

> "As applied to this case, we believe that while every individual has a Constitutional right to be a non-believer, that right is a shield, not a sword, and may not be used to compel others to adopt the same attitude."

On the question of compulsion, an analysis of cases in this area led the Attorney General to find that, ". . . despite the basic principle, a school devotional exercise would none the less be objectionable if there were any direct compulsion. Any coercion would be an abridgment of one's individual right to the 'free exercise' of religion." Accordingly, it was suggested to the School Board that provision be included within the appropriate rule to allow objectors to be excused from attending the recital.

Dissatisfied with this opinion and the resulting adoption of the amendment, the Petitioners, on December 7, 1960, filed a Petition for a writ of mandamus in the Superior Court of Baltimore City against the Respondents, praying that the Board be commanded to "rescind and cancel" the aforesaid rule, as amended, and to cause the teachers of Baltimore City to discontinue the practice of reading portions of the Bible and or reciting the Lord's Prayer during the morning exercise.

On January 16, 1961, the Respondents demurred to the Mandamus Petition on the ground that it did not state a cause of action for which relief may be granted by way of mandamus.

On March 2, 1961, a hearing without benefit of record was held on the demurrer, and on April 27, 1961, the trial court filed a memorandum opinion in which the demurrer was sustained without leave to amend. The lower court (Prendergast, J.) in its opinion, stated very aptly that:

> "If religion, pure and undefiled and in every form, were removed from the classrooms, there would remain only atheism. *While the present Petitioners clamor for religious freedom, their ultimate objective is religious suppression.* The two concepts are mutually repugnant. One cannot practice religion if he has no religion to practice. If Petitioners were granted the relief sought, then they, as non-believers, would acquire a preference over the vast majority of believers. Our Government is founded on the proposition that people should respect the religious view of others, not destroy them." (Emphasis supplied.)

The Petitioners appealed to the Court of Appeals of Maryland, raising the following questions:

1. Do the First and Fourteenth Amendments compel the total abolition of the reading, without comment, of a por-

tion of any version of the Bible and or the use of the Lord's Prayer where no evidence of any compulsion exists upon any pupil to participate and where any pupil, upon parental objection, may be excused from participation?

2. Does the fact that a pupil can be excused from participation in the opening exercises violate the "equal protection" clause of the Fourteenth Amendment?

After argument in November, 1961, the Court of Appeals ordered re-argument in February, 1962, regarding the Constitutional questions only. By a divided Court (4-3) the reading of a portion of the Bible and or the Lord's Prayer in the public schools was upheld. The majority reviewed and analyzed the leading cases involving the question of Separation of Church and State, as well as lower Court decisions relating precisely to the question at bar. After discussing the facts, the Court said:

> ". . . But here, where the use of school time and the expenditure of public funds is negligible, we think the daily opening exercises of the schools in Baltimore City are in the same category as the opening prayer ceremonies in the Legislature of this State and in the Congress of the United States, in the public meetings and conventions which are opened with prayers or supplications to God, and in the formal call of Court sessions by the Crier in State and Federal Courts. For these reasons, and particularly because the Appellant-Student in this case was not compelled to participate in or attend the program he claims is offensive to him, we hold that the opening exercises do not violate the religious clauses of the First Amendment."

Final judgment was entered in the office of the Clerk of the Court of Appeals of Maryland on April 6, 1962 (Appendix to Petitioners' brief, pages 22 (a) and 23 (a)).

REASONS FOR DENYING THE WRIT

POINT I.

The judgment handed down by the Court of Appeals of Maryland upholding the constitutionality of the morning opening exercises in the public schools as so prescribed by the School Commissioners of Baltimore City is not in conflict with the First and Fourteenth Amendments of the Federal Constitution, as so analyzed and interpreted by this Court in *Engel v. Vitale*, U.S. (1961), 18 Misc. 2d 659, 191 N.Y.S. 2d 453. Furthermore, the judgment is in accord with the holdings in *Zorach v. Clauson*, 343 U.S. 306, 72 S. Ct. 679, 96 L. Ed. 954 (1952); *Church of the Holy Trinity v. United States*, 143 U.S. 457, 12 S. Ct. 511, 36 L. Ed. 226 (1892); *West Virginia State Board of Education v. Barnett*, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628, 147 A.L.R. 674 (1943); and *Torcaso v. Watkins*, 367 U.S. 488, 81 S. Ct. 1680, 6 L. Ed. 2nd. 2d 982 (1961). The writ of certiorari should therefore be denied.

As stated in part by Rule 19 of this Court, the granting of the writ of certiorari is not a matter of right, but of sound judicial discretion and will be granted only where there are special and important reasons presented. Paragraph (a) of that Rule, in elaboration, expresses two examples generally deserving of review. First, where a State Court has decided a Federal question of substance not previously passed upon by this Court. Second, where the State Court has rendered a decision not in accord with applicable decisions of this Court. Neither ground is applicable in the present case. Cf. *Zorach v. Clauson*, *supra*, and related cases.

The opening exercise (notwithstanding Petitioners' claim that it "pronounces belief in God as the source of all moral and spiritual values, equating these values with religious

values, and thereby renders sinister, alien and suspect the beliefs and ideals of your Petitioners, promoting doubt and question of their morality, good citizenship and good faith" — Appellants' original Petition, Court of Appeals of Md., E. 4) simply constitutes a public recital of an ancient and historical document in recognition of the existence of a Supreme Being in a predominantly religious society. It is an exercise at the start of the school day which by its very nature is intended to cause the student to soberly approach his work of that day.

It is submitted that the decision of this Court in *Engel v. Vitale, supra*, was not intended to prohibit Bible reading in the public schools. Respondent does not quarrel with what it understands that holding to mean, namely, that a governmental agency is prohibited by the Constitution from composing prayers for recitation in the public schools. For it is recognized that, had this Court concluded otherwise each State would then possess the clear authority to compose a prayer to its personal liking. It is not inconceivable that due to the ever present existence of personal prejudices for or against certain races and religions in various parts of our country, prayers could be composed favoring one race or religion over another. In addition, it seems not unlikely that an area in which a particular denomination predominates could designedly, by the composition of a prayer, either extend preference to that denomination or suppress another. This same danger does not exist when provision is made simply for the ancient, traditional and historical reading of the Bible and or the Lord's Prayer with adequate provision for excuse.

Mr. Justice Black, speaking for the majority in *Engel, supra*, said (at pp. 3 and 4 of the Opinion of the Court):

> "... There can, of course, be no doubt that New York's program of daily classroom invocation of God's

blessings as prescribed in the Regents' prayer is a religious activity. It is a solemn avowal of divine faith and supplication for the blessings of the Almighty. The nature of such a prayer has always been religious, none of the respondents has denied this and the trial court expressly so found:

> 'The religious nature of prayer was recognized by Jefferson and has been concurred in by theological writers, the United States Supreme Court and State courts and administrative officials, including New York's Commissioner of Education. A committee of the New York Legislature has agreed.
>
> 'The Board of Regents as amicus curiae, the respondents and intervenors all concede the religious nature of prayer, but seek to distinguish this prayer because it is based on our spiritual heritage.

"The petitioners contend among other things that the state laws requiring or permitting use of the Regents' prayer must be struck down as a violation of the Establishment Clause because that prayer was composed by governmental officials as a part of a governmental program to further religious beliefs. For this reason, petitioners argue, the State's use of the Regents' prayer in its public school system breaches the constitutional wall of separation between Church and State. *We agree with that contention since we think that the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government."* (Emphasis supplied.)

Clearly, this Court did not proscribe every form of religious activity in the public schools. If such had been the holding, then the Regents' prayer would have been struck

down merely because it is a "religious activity". However, the Court was careful not to rest its decision on that basis. It struck down the prayer because it was "composed" by governmental officials. The narrow holding of *Engel v. Vitale, supra,* is that ". . . it is no part of the business of government to *compose* official prayers for any group of the American people to recite as a part of a religious program carried on by government." (Emphasis supplied.)

This, we submit, was the essence of this Court's objection to the New York exercise. *No such fatal defect is present in the instant case.* Nowhere in the case at bar do we find the government's hand in the composition of a prayer. The Respondent School Board, in its rule, relies solely on Biblical text without intervention of any municipal agency as to additional remarks or comments.

Furthermore, Mr. Justice Douglas, in his concurring opinion, said: "It is customary in deciding a constitutional question to treat it in its narrowest form." His recognition of this point further emphasizes that this Court intended to limit *Engel, supra* strictly to its own facts and that it did not intend it to include, in supposition form, the many ramifications which may be thought by some to evolve from this decision.

If the Baltimore School Board rule were to state that selected passages from the Declaration of Independence and the Star Spangled Banner (our most sacred national heritages containing the full embodiment of Americanism) should be read before the beginning of each school day, one could hardly commend to this Court that such would be in v'ation of the First and Fourteenth Amendments. To do so would be to say that the Declaration of Independence and our National Anthem are themselves unconstitutional. And yet in furtherance of such a rule, the following reading or recitation could be prescribed:

> "We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the Pursuit of Happiness * * * appealing to the Supreme Judge of the World for the rectitude of our intentions * * * with a firm reliance on the protection of Divine Providence * * *" (Declaration of Independence). "We praise the power that hath preserved us a nation. In God is our trust" (Star Spangled Banner).

These are "self-evident" truths which proclaim in the words of our forefathers the golden rule.

And it is equally self evident that these passages had their origins in the traditions of our ancient religious heritages, primarily the Bible.

Certainly, if it should seriously be contended that an opening exercise of the sort suggested is violative of the Constitution, then it could equally well be argued, in fact even more forcefully so, that the National Anthem and the Salute to the Flag ("one nation indivisible under God") are *per se* in violation of the First Amendment since they have been adopted in their specific forms by Acts of the Congress. Indeed the antagonists to religionists could be expected to argue that the Declaration of Independence which preceded the Constitution likewise violates that latter document.

If, therefore, the recitation or reading in the schools of portions of these national writings is a violation of the Fourteenth Amendment (which includes by implication the prohibitions of the First Amendment) because they run counter to the establishment of religion clause, then the Acts of Congress which provided for the National Anthem and the Salute to the Flag are equally objectionable because they represent the direct act of the Federal Government in a prohibited field. This is the *reductio ad absurdum* of

the Petitioner's argument and of those who would have this Court strike down all exercises in the schools and elsewhere which have any religious connotations or which refer to a Supreme Being. They would make a mockery of the Declaration of Independence, which presaged, indeed gave birth to, the Constitution. They would declare to those who gave their lives at Yorktown, Gettysburg, the Marne, Iwo Jima, Chosin Reservoir and all other battles fought to preserve our national heritages, that they had been duped by the declarations and purposes on which this Country had been founded. They would declare to those of this generation and of the generations to come that these hallowed writings were conceived in error and are simply sops for the misguided and uninformed. In short, they would ask this Court to repudiate its many declarations such as that of Mr. Justice Douglas that "We are a religious people whose institutions presuppose a Supreme Being." (*Zorach v. Clauson*, p. 313 of 343 U.S.)

And if the reading of the selected passages from our National documents is proper, which indeed this Court would surely approve, then the reading of passages, without comment, from the writings which formed the foundation of these National declarations is equally proper.

It is, therefore, submitted that total reliance on the *Engel* decision, *supra*, as being determinative of the instant case, is to wrongly interpret the Court's holding. No inconsistency exists in disallowing governmental authorship, on the one hand, and allowing the time honored reading of the ancient Bible and an ancient prayer, on the other. In addition, there have been other cases decided by this Court which resolve the question here presented, thereby warranting the denial of the writ here sought.

Initially, the significance of opening exercises was eloquently and succinctly expressed by Mr. Justice Douglas in *Zorach v. Clauson*, 343 U.S. 306, 313, 72 S. Ct. 679, 684, 96 L. Ed. 954 (1952), when he said, "We are a religious people, whose institutions presuppose a Supreme Being." These words echo the written and spoken thoughts of the Continental Congress in 1775, the Declaration of Independence in 1776, the acts of our Congress throughout its life, the swearing in of the President, the members of Congress and indeed the members of this very Court, and the pronouncements of the President of the United States in his Inaugural Address on January 20, 1961.

Are these gestures merely token recognition of the existence of God? Obviously not. They are the embodiment of our spiritual heritage, the impetus which caused our Founding Fathers to flee to our shores from the wrath of religious tyranny for the freedom they had so longingly sought.

In *Church of the Holy Trinity v. U.S.*, 143 U.S. 457, 470, 12 S. Ct. 511, 516, 36 L. Ed. 226, 231 (1891), this Court thoroughly analyzed various State Constitutional provisions relating to the recognition of a Supreme Being and concluded, through Mr. Justice Brewer:

> "There is no dissonance in these declarations. There is a universal language pervading them all, having one meaning; they affirm and re-affirm that this is a religious nation. These are not individual sayings, declarations of private persons; they are organic utterances; they speak the voice of the entire people . . ."

And continuing with Mr. Justice Douglas' observations in *Zorach v. Clauson*, 343 U.S. 306, 72 S. Ct. 679, 96 L. Ed. 954 (1952), at p. 313:

> "We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom

> to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of Government that shows no partiality to any one group and that lets each flourish according to the will of its adherents and the appeal of its dogma. When the State encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our tradition. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. *To hold that it may not, would be to find in the Constitution a requirement that the Government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe.*" (Emphasis supplied.)

The recital of a few verses of the Bible and/or the reading of the Lord's Prayer, without comment, is thus in keeping with the views of this Court expressed both in *Church of the Holy Trinity*, and *Zorach*, *supra*. Here the School Board, in providing for morning exercises, is demonstrating the very respect and encouragement which this Court has approved. Indeed the reading itself is demonstrative of the State's cooperation with the spiritual needs of its people.

Petitioners relied, and now continue to rely, on *McCollum v. Board of Education*, 333 U.S. 203, 68 S. Ct. 461, 92 L. Ed. 646 (1948), which struck down the Illinois released time program. They claim that a parallel situation exists because here, as there, the exercise is conducted on school premises. A closer examination of the facts in *McCollum*, *supra*, however, shows a program of formal sectarian religious education carried on during regular school hours wherein pupils were segregated in accordance with their particular faiths. The difference between the two situations is indeed obvious. One cannot seriously compare a

brief recital of the Scriptures made without comment to actual sectarian religious instruction during classroom time.

The decision of *West Virginia State Board of Education v. Barnett*, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628, 147 A.L.R. 674 (1943), goes to another of the important issues raised by the Petitioners, namely, compulsion. An examination of this opinion supports the Respondent's argument that this Court has already dealt with and disposed of the problem of compulsion. There, the students and teachers were required by the State Board of Education to pledge allegiance to the flag as part of the morning opening exercises. The objectors to this act were Jehovah's Witnesses, who considered participation in the salute as an act of idolatry and, therefore, contrary to their religious convictions. Failure to engage in the flag exercise resulted in expulsion and possible criminal prosecution. The Supreme Court struck down as unconstitutional the compulsive factor involved "insofar as it applies to children having conscientious scruples against giving such salute." However, the mandate applied only to those students and not to the exercise itself.

Obviously this Court's edict did not apply to *all* the pupils, even though the exercise was offensive to a minority group. In the case at Bar, the Petitioners, though objecting to the exercise and claiming they have been "wronged", would ask this Court to strike the entire exercise as to all children now attending the public schools. Such a request is clearly inconsistent with the decision in the *Barnett* case, *supra*.

Petitioners, before the Maryland Court of Appeals, and now here, rely on *Torcaso v. Watkins*, 367 U.S. 488, 81 S. Ct. 1680, 6 L. Ed. 2d 982 (1961), in support of their position that a "State Government [is] forcing or influencing a

person . . . to profess a belief or disbelief in any religion as prohibited in *Everson v. Board of Education* (330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711)" (1947).

It should first be noted that in *Torcaso, supra*, this Court did not strike down the taking of an oath *per se*, it merely held that one could not be *compelled* by the State to take an oath in order to hold public office, since that would constitute religious compulsion. Here the School Board is not compelling anyone to believe in religion. The students are not compelled to do anything in relation to the opening exercises. They are not asked to speak. They are not requested to perform any act. They are not required to remain in the classroom. As stated in the majority opinion by the Maryland Court of Appeals in the instant case. "The present case, however, as has been pointed out, is completely devoid of any compulsion or coercion to attend school opening exercises."

Yet Petitioners are asking that a traditional exercise of this type be forever barred to all students. They are asking that the overwhelming majority of our young people be denied the right to even contemplate or meditate on the existence of God in the classroom through the medium of long accepted writings. They ask for a complete and unequivocal compliance with their personal view, i.e., atheism. In the words of the nisi prius Judge in this case, while they "clamor for religious freedom, their ultimate objective is religious suppression." What they seek is not the protection of their constitutional rights but the denial to all others of the rights guaranteed to them under the First Amendment that they shall not be prohibited the free exercise of religion.

On the basis of *Zorach v. Clauson, supra, Church of the Holy Trinity v. U.S., supra, West Virginia State Board of Education v. Barnett, supra, and Torcaso v. Watkins, supra,* it is submitted that the issue of constitutionality has been properly determined and no substantial Federal question is presented here necessitating review by this Court.

POINT II.

The allegation of the Petitioners as to the injury they sustained and their further allegation as citizens and taxpayers does not give them sufficient standing to raise the question herein under *Doremus v. Board of Education*, 5 N.J. 453, 75 A. 2d 880, Appeal dismissed (1950) 342 U.S. 429, 72 S. Ct. 394, 96 L. Ed. 475 (1951). The fact that the Petitioners claim in characteristically nebulous terms that they were injured or offended by the morning opening exercises, and then fail to affirmatively show that they suffered and sustained "good-faith pocketbook" loss and financial injury, can only lead to the conclusion that they had no standing from the start to maintain the present action.

In *Doremus v. Board of Education, supra*, this Court denied the Appellant's request for certiorari on the grounds that the question before it was rendered moot due to the ensuing graduation of the Appellant from the public school system prior to a hearing on its merits. However, other considerations were discussed by the Court which directly relate to the position of the present Petitioners.

Initially, Petitioners allege that the enforcement of the rule "threatens their religious liberty" and that by voluntarily excluding himself from the exercise causes the Petitioner "to lose caste with his fellow, to be regarded with aversion, and to be subjected to reproach and insult". It

is submitted that these assertions are imaginary in nature and exist only in the minds of the Appellants. No facts have been exhibited by the Petitioners in their Complaint to substantiate these allegations. Furthermore, there is no allegation that he was "compelled to accept, approve or confess agreement with any dogma or creed or even to listen when the Scriptures are read." (*Doremus v. Board of Education, supra.*) The only allegation is that, in essence, he objects to the exercise.

The question of standing was recognized and discussed by the Supreme Court of New Jersey in *Doremus, supra*, at pp. 881 and 882 as follows:

> "No one is before us asserting that his religious practices have been interferred with, [What religious practices can an atheist have?] or that his right to worship in accordance with the dictates of his conscience has been suppressed. No religious sect is a party to the cause. No representative of, or spokesman for, a religious body has attacked the statute here or below. One of the Plaintiffs is 'citizen and taxpayer', and the only interest he asserts is just that, and in those words set forth in the Complaint and not followed by specifications or proof. It is conceded that he is a citizen and a taxpayer, but it is not charged and it is neither conceded nor proved that the brief interruption in the day's schooling caused by compliance with the statute adds cost to the school expenses or varies by more than an incomputable scintilla the economy of the day's work." (Bracketed words ours.)

The facts in the instant case fit well within this analysis by the New Jersey Court. In many respects, the issues are identical. By applying *Doremus, supra*, to the case at bar, denial of certiorari therefore follows. Even though this Petitioner is still a student in a public high school, he has not shown how he possibly sustained pecuniary loss. The

original Petition filed in these proceedings alleges that the adult Petitioner is a "citizen resident and taxpayer of Baltimore City, State of Maryland." In *Doremus, supra*, this Court said, through Mr. Justice Jackson, "There is no allegation that this activity is supported by any separate tax or paid for from any particular appropriation or that it adds any sum whatever to the cost of conducting the school. No information is given as to what kind of taxes are paid by the Appellants and there is no averment that the Bible reading increases any tax they do pay or that as taxpayers they are, will or possibly can be out of pocket because of it."

It is submitted that this same language is applicable to the case at bar. Appellants cannot show the direct pecuniary interest that the law requires them to demonstrate. Merely relying on vague, indefinite allegations is not enough. They do not fit into *Everson v. Board of Education*, 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711 (1947), namely, an averment of actual School District funds disbursed to parents. The issue here is solely one of religious objection. Without showing the required injury needed to maintain a taxpayer's suit, this Petition must fail.

CONCLUSION

For the reasons stated above it is respectfully submitted that the appeal herein presents no federal question worthy of consideration by this Court. The decision of *Engel v. Vitale, supra*, does not prohibit Bible reading or the recitation of the Lord's Prayer in the public schools. Previously decided cases by this Court on the question of Separation of Church and State approve of the type of opening exercises provided by the Respondent.

If, however, this Court finds that certiorari is warranted, Respondent requests that it be permitted to argue this case on the merits.

Respectfully submitted.

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